

Introduced by Senator Kuehl

February 22, 2005

An act to amend Section 1218 of the Code of Civil Procedure, to amend Section 6380 of the Family Code, and to amend Sections 136.2 and 1203.097 of the Penal Code, relating to court orders.

LEGISLATIVE COUNSEL'S DIGEST

SB 720, as introduced, Kuehl. Court orders.

(1) Existing law provides specified procedures to initiate and pursue contempt orders.

This bill would authorize a district attorney or city attorney to initiate and pursue a court action for contempt against a party for failing to comply with a court order entered pursuant to the Family Code.

(2) Existing law requires the court to transmit data to law enforcement personnel related to certain protective orders.

This bill would further require the court to similarly transmit data related to any protective order issued, modified, extended, or terminated pursuant to specified provisions of the Family Code.

(3) Existing law provides a mechanism whereby the court may issue a protective order.

Prior to termination of certain protective orders, this bill would require the district attorney or city attorney to notify a victim 30 days prior to that termination.

By adding to the duties of local employees, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1218 of the Code of Civil Procedure is
2 amended to read:

3 1218. (a) Upon the answer and evidence taken, the court or
4 judge shall determine whether the person proceeded against is
5 guilty of the contempt charged, and if it be adjudged that he or
6 she is guilty of the contempt, a fine may be imposed on him or
7 her not exceeding one thousand dollars (\$1,000), or he or she
8 may be imprisoned not exceeding five days, or both. In addition,
9 a person who is subject to a court order as a party to the action,
10 or any agent of this person, who is adjudged guilty of contempt
11 for violating that court order may be ordered to pay to the party
12 initiating the contempt proceeding the reasonable attorney's fees
13 and costs incurred by this party in connection with the contempt
14 proceeding.

15 (b) No party, who is in contempt of a court order or judgment
16 in a dissolution of marriage or legal separation action, shall be
17 permitted to enforce such an order or judgment, by way of
18 execution or otherwise, either in the same action or by way of a
19 separate action, against the other party. This restriction shall not
20 affect nor apply to the enforcement of child or spousal support
21 orders.

22 (c) In any court action in which a party is found in contempt of
23 court for failure to comply with a court order pursuant to the
24 Family Code, the court shall order the following:

25 (1) Upon a first finding of contempt, the court shall order the
26 contemner to perform community service of up to 120 hours, or
27 to be imprisoned up to 120 hours, for each count of contempt.

28 (2) Upon the second finding of contempt, the court shall order
29 the contemner to perform community service of up to 120 hours,
30 in addition to ordering imprisonment of the contemner up to 120
31 hours, for each count of contempt.

(3) Upon the third or any subsequent finding of contempt, the court shall order both of the following:

(A) The court shall order the contemner to serve a term of imprisonment of up to 240 hours, and to perform community service of up to 240 hours, for each count of contempt.

(B) The court shall order the contemner to pay an administrative fee, not to exceed the actual cost of the contemner's administration and supervision, while assigned to a community service program pursuant to this paragraph.

(4) The court shall take parties' employment schedules into consideration when ordering either community service or imprisonment, or both.

(d) Pursuant to Section 1211 and this section, a district attorney or city attorney may initiate and pursue a court action for contempt against a party for failing to comply with a court order entered pursuant to the Family Code.

SEC. 2. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Restraining Order System, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data. All data with respect to criminal court protective orders issued, modified, extended, or terminated under subdivision (g) of Section 136.2 of the Penal Code, *and all data with respect to protective orders, including their issuance, modification, extension, or termination,*

1 *to which this division applies pursuant to Section 6221*, shall be
2 transmitted by the court or its designee within one business day
3 to law enforcement personnel by either one of the following
4 methods:

5 (1) Transmitting a physical copy of the order to a local law
6 enforcement agency authorized by the Department of Justice to
7 enter orders into CLETS.

8 (2) With the approval of the Department of Justice, entering
9 the order into CLETS directly.

10 (b) Upon the issuance of a protective order to which this
11 division applies pursuant to Section 6221, or the issuance of a
12 temporary restraining order or injunction relating to harassment
13 or domestic violence pursuant to Section 527.6 or 527.8 of the
14 Code of Civil Procedure, or the issuance of a criminal court
15 protective order under subdivision (g) of Section 136.2 of the
16 Penal Code, or the issuance of a juvenile court restraining order
17 related to domestic violence pursuant to Section 213.5, 304, or
18 362.4 of the Welfare and Institutions Code, or the issuance of a
19 protective order pursuant to Section 15657.03 of the Welfare and
20 Institutions Code, or upon registration with the court clerk of a
21 domestic violence protective or restraining order issued by the
22 tribunal of another state, as defined in Section 6401, and
23 including any of the foregoing orders issued in connection with
24 an order for modification of a custody or visitation order issued
25 pursuant to a dissolution, legal separation, nullity, or paternity
26 proceeding the Department of Justice shall be immediately
27 notified of the contents of the order and the following
28 information:

29 (1) The name, race, date of birth, and other personal
30 descriptive information of the respondent as required by a form
31 prescribed by the Department of Justice.

32 (2) The names of the protected persons.

33 (3) The date of issuance of the order.

34 (4) The duration or expiration date of the order.

35 (5) The terms and conditions of the protective order, including
36 stay-away, no-contact, residency exclusion, custody, and
37 visitation provisions of the order.

38 (6) The department or division number and the address of the
39 court.

40 (7) Whether or not the order was served upon the respondent.

1 (8) The terms and conditions of any restrictions on the
2 ownership or possession of firearms.

3 All available information shall be included; however, the
4 inability to provide all categories of information shall not delay
5 the entry of the information available.

6 (c) The information conveyed to the Department of Justice
7 shall also indicate whether the respondent was present in court to
8 be informed of the contents of the court order. The respondent's
9 presence in court shall provide proof of service of notice of the
10 terms of the protective order. The respondent's failure to appear
11 shall also be included in the information provided to the
12 Department of Justice.

13 (d) (1) Within one business day of service, any law
14 enforcement officer who served a protective order shall submit
15 the proof of service directly into the Department of Justice
16 Domestic Violence Restraining Order System, including his or
17 her name and law enforcement agency, and shall transmit the
18 original proof of service form to the issuing court.

19 (2) Within one business day of receipt of proof of service by a
20 person other than a law enforcement officer, the clerk of the
21 court shall submit the proof of service of a protective order
22 directly into the Department of Justice Domestic Violation
23 Restraining Order System, including the name of the person who
24 served the order. If the court is unable to provide this notification
25 to the Department of Justice by electronic transmission, the court
26 shall, within one business day of receipt, transmit a copy of the
27 proof of service to a local law enforcement agency. The local law
28 enforcement agency shall submit the proof of service directly
29 into the Department of Justice Domestic Violence Restraining
30 Order System within one business day of receipt from the court.

31 (e) The Department of Justice shall maintain a Domestic
32 Violence Restraining Order System and shall make available to
33 court clerks and law enforcement personnel, through computer
34 access, all information regarding the protective and restraining
35 orders and injunctions described in subdivision (b), whether or
36 not served upon the respondent.

37 (f) If a court issues a modification, extension, or termination of
38 a protective order, it shall be on forms adopted by the Judicial
39 Council of California and that have been approved by the
40 Department of Justice, and the transmitting agency for the county

1 shall immediately notify the Department of Justice, by electronic
2 transmission, of the terms of the modification, extension, or
3 termination.

4 (g) The Judicial Council shall assist local courts charged with
5 the responsibility for issuing protective orders by developing
6 informational packets describing the general procedures for
7 obtaining a domestic violence restraining order and indicating the
8 appropriate Judicial Council forms. The informational packets
9 shall include a design, that local courts shall complete, that
10 describes local court procedures and maps to enable applicants to
11 locate filing windows and appropriate courts, and shall also
12 include information on how to return proofs of service, including
13 mailing addresses and fax numbers. The court clerk shall provide
14 a fee waiver form to all applicants for domestic violence
15 protective orders. The court clerk shall provide all Judicial
16 Council forms required by this chapter to applicants free of
17 charge. The informational packet shall also contain a statement
18 that the protective order is enforceable in any state, as defined in
19 Section 6401, and general information about agencies in other
20 jurisdictions that may be contacted regarding enforcement of an
21 order issued by a court of this state.

22 (h) For the purposes of this part, “electronic transmission”
23 shall include computer access through the California Law
24 Enforcement Telecommunications System (CLETS).

25 (i) Only protective and restraining orders issued on forms
26 adopted by the Judicial Council of California and that have been
27 approved by the Department of Justice shall be transmitted to the
28 Department of Justice. However, this provision shall not apply to
29 a valid protective or restraining order related to domestic or
30 family violence issued by a tribunal of another state, as defined
31 in Section 6401. Those orders shall, upon request, be registered
32 pursuant to Section 6404.

33 SEC. 3. Section 136.2 of the Penal Code is amended to read:

34 136.2. Upon a good cause belief that harm to, or intimidation
35 or dissuasion of, a victim or witness has occurred or is
36 reasonably likely to occur, any court with jurisdiction over a
37 criminal matter may issue orders including, but not limited to, the
38 following:

39 (a) Any order issued pursuant to Section 6320 of the Family
40 Code.

1 (b) An order that a defendant shall not violate any provision of
2 Section 136.1.

3 (c) An order that a person before the court other than a
4 defendant, including, but not limited to, a subpoenaed witness or
5 other person entering the courtroom of the court, shall not violate
6 any provisions of Section 136.1.

7 (d) An order that any person described in this section shall
8 have no communication whatsoever with any specified witness
9 or any victim, except through an attorney under any reasonable
10 restrictions that the court may impose.

11 (e) An order calling for a hearing to determine if an order as
12 described in subdivisions (a) to (d), inclusive, should be issued.

13 (f) An order that a particular law enforcement agency within
14 the jurisdiction of the court provide protection for a victim or a
15 witness, or both, or for immediate family members of a victim or
16 a witness who reside in the same household as the victim or
17 witness or within reasonable proximity of the victim's or
18 witness' household, as determined by the court. The order shall
19 not be made without the consent of the law enforcement agency
20 except for limited and specified periods of time and upon an
21 express finding by the court of a clear and present danger of
22 harm to the victim or witness or immediate family members of
23 the victim or witness.

24 For purposes of this subdivision, "immediate family members"
25 include the spouse, children, or parents of the victim or witness.

26 (g) (1) Any order protecting victims of violent crime from *all*
27 *contact by the defendant, or* contact, with the intent to annoy,
28 harass, threaten, or commit acts of violence, by the defendant.
29 The court or its designee shall transmit orders made under this
30 subdivision to law enforcement personnel within one business
31 day of the issuance, modification, extension, or termination of
32 the order, pursuant to subdivision (a) of Section 6380 of the
33 Family Code. It is the responsibility of the court to transmit the
34 modification, extension, or termination orders made under this
35 subdivision to the same agency that entered the original
36 protective order into the Domestic Violence Restraining Order
37 System.

38 (2) Any order issued, modified, extended, or terminated by a
39 court pursuant to this subdivision shall be issued on forms
40 adopted by the Judicial Council of California and that have been

1 approved by the Department of Justice pursuant to subdivision (i)
2 of Section 6380 of the Family Code. However, the fact that an
3 order issued by a court pursuant to this section was not issued on
4 forms adopted by the Judicial Council and approved by the
5 Department of Justice shall not, in and of itself, make the order
6 unenforceable.

7 (3) Any person violating any order made pursuant to
8 subdivisions (a) to (g), inclusive, may be punished for any
9 substantive offense described in Section 136.1, or for a contempt
10 of the court making the order. A finding of contempt shall not be
11 a bar to prosecution for a violation of Section 136.1. However,
12 any person so held in contempt shall be entitled to credit for any
13 punishment imposed therein against any sentence imposed upon
14 conviction of an offense described in Section 136.1. Any
15 conviction or acquittal for any substantive offense under Section
16 136.1 shall be a bar to a subsequent punishment for contempt
17 arising out of the same act.

18 (h) (1) A person subject to a protective order issued under this
19 section shall not own, possess, purchase, receive, or attempt to
20 purchase or receive a firearm while the protective order is in
21 effect.

22 (2) The court shall order a person subject to a protective order
23 issued under this section to relinquish any firearms he or she
24 owns or possesses pursuant to Section 527.9 of the Code of Civil
25 Procedure.

26 (3) Every person who owns, possesses, purchases or receives,
27 or attempts to purchase or receive a firearm while the protective
28 order is in effect is punishable pursuant to subdivision (g) of
29 Section 12021 of the Penal Code.

30 (i) (1) In all cases where the defendant is charged with a
31 crime of domestic violence, as defined in Section 13700, the
32 court shall consider issuing the above-described orders on its
33 own motion. All interested parties shall receive a copy of those
34 orders. In order to facilitate this, the court's records of all
35 criminal cases involving domestic violence shall be marked to
36 clearly alert the court to this issue. *In any case in which any court*
37 *later orders that the protective order be terminated, the district*
38 *attorney or city attorney shall notify the victim of the order 30*
39 *days before the termination takes effect.*

1 (2) In those cases in which a complaint, information, or
2 indictment charging a crime of domestic violence, as defined in
3 Section 13700, has been issued, a restraining order or protective
4 order against the defendant issued by the criminal court in that
5 case has precedence in enforcement over any civil court order
6 against the defendant.

7 (3) Custody and visitation with respect to the defendant and
8 his or her minor children may be ordered by a family or juvenile
9 court consistent with the protocol established pursuant to
10 subdivision (i).

11 (j) On or before January 1, 2003, the Judicial Council shall
12 promulgate a protocol, for adoption by each local court in
13 substantially similar terms, to provide for the timely coordination
14 of all orders against the same defendant and in favor of the same
15 named victim or victims. The protocol shall include, but shall not
16 be limited to, mechanisms for assuring appropriate
17 communication and information sharing between criminal,
18 family, and juvenile courts concerning orders and cases that
19 involve the same parties, and shall permit a family or juvenile
20 court order to coexist with a criminal court protective order
21 subject to the following conditions:

22 (1) Any order that permits contact between the restrained
23 person and his or her children shall provide for the safe exchange
24 of the children and shall not contain language either printed or
25 handwritten that violates a “no contact order” issued by a
26 criminal court.

27 (2) Safety of all parties shall be the courts’ paramount
28 concern. The family or juvenile court shall specify the time, day,
29 place, and manner of transfer of the child, as provided in Section
30 3100 of the Family Code.

31 (k) On or before January 1, 2003, the Judicial Council shall
32 modify the criminal and civil court protective order forms
33 consistent with this section.

34 SEC. 4. Section 1203.097 of the Penal Code, as amended by
35 Section 1 of Chapter 431 of the Statutes of 2003, is amended to
36 read:

37 1203.097. (a) If a person is granted probation for a crime in
38 which the victim is a person defined in Section 6211 of the
39 Family Code, the terms of probation shall include all of the
40 following:

1 (1) A minimum period of probation of 36 months, which may
2 include a period of summary probation as appropriate.

3 (2) A criminal court protective order protecting the victim
4 from further acts of violence, threats, stalking, sexual abuse, and
5 harassment, and, if appropriate, containing residence exclusion or
6 stay-away conditions.

7 (3) Notice to the victim of the disposition of the case. *If any*
8 *court later orders that the protective order be terminated, the*
9 *district attorney or city attorney shall notify the victim of the*
10 *order 30 days before the termination takes effect.*

11 (4) Booking the defendant within one week of sentencing if
12 the defendant has not already been booked.

13 (5) A minimum payment by the defendant of four hundred
14 dollars (\$400) to be disbursed as specified in this paragraph. If,
15 after a hearing in court on the record, the court finds that the
16 defendant does not have the ability to pay, the court may reduce
17 or waive this fee.

18 Two-thirds of the moneys deposited with the county treasurer
19 pursuant to this section shall be retained by counties and
20 deposited in the domestic violence programs special fund created
21 pursuant to Section 18305 of the Welfare and Institutions Code,
22 to be expended for the purposes of Chapter 5 (commencing with
23 Section 18290) of Part 6 of Division 9 of the Welfare and
24 Institutions Code. The remainder shall be transferred, once a
25 month, to the Controller for deposit in equal amounts in the
26 Domestic Violence Restraining Order Reimbursement Fund and
27 in the Domestic Violence Training and Education Fund, which
28 are hereby created, in an amount equal to one-third of funds
29 collected during the preceding month. In no event may the funds
30 transferred to the Controller be less than one hundred thirty-three
31 dollars (\$133) for each defendant. However, if the court orders
32 the defendant to pay less than two hundred dollars (\$200)
33 because of his or her inability to pay, the state shall receive
34 two-thirds of the payment. Moneys deposited into these funds
35 pursuant to this section shall be available upon appropriation by
36 the Legislature and shall be distributed each fiscal year as
37 follows:

38 (A) Funds from the Domestic Violence Restraining Order
39 Reimbursement Fund shall be distributed to local law
40 enforcement or other criminal justice agencies for state-mandated

1 local costs resulting from the notification requirements set forth
2 in subdivision (b) of Section 6380 of the Family Code, based on
3 the annual notification from the Department of Justice of the
4 number of restraining orders issued and registered in the state
5 domestic violence restraining order registry maintained by the
6 Department of Justice, for the development and maintenance of
7 the domestic violence restraining order databank system.

8 (B) Funds from the Domestic Violence Training and
9 Education Fund shall support a statewide training and education
10 program to increase public awareness of domestic violence and
11 to improve the scope and quality of services provided to the
12 victims of domestic violence. Grants to support this program
13 shall be awarded on a competitive basis and be administered by
14 the State Department of Health Services, in consultation with the
15 statewide domestic violence coalition, which is eligible to receive
16 funding under this section.

17 (6) Successful completion of a batterer's program, as defined
18 in subdivision (c), or if none is available, another appropriate
19 counseling program designated by the court, for a period not less
20 than one year with periodic progress reports by the program to
21 the court every three months or less and weekly sessions of a
22 minimum of two hours class time duration. The defendant shall
23 attend consecutive weekly sessions, unless granted an excused
24 absence for good cause by the program for no more than three
25 individual sessions during the entire program, and shall complete
26 the program within 18 months, unless, after a hearing, the court
27 finds good cause to modify the requirements of consecutive
28 attendance or completion within 18 months.

29 (7) (A) (i) The court shall order the defendant to comply with
30 all probation requirements, including the requirements to attend
31 counseling, keep all program appointments, and pay program
32 fees based upon the ability to pay.

33 (ii) The terms of probation for offenders shall not be lifted
34 until all reasonable fees due to the counseling program have been
35 paid in full, but in no case shall probation be extended beyond
36 the term provided in subdivision (a) of Section 1203.1. If the
37 court finds that the defendant does not have the ability to pay the
38 fees based on the defendant's changed circumstances, the court
39 may reduce or waive the fees.

1 (B) Upon request by the batterer's program, the court shall
2 provide the defendant's arrest report, prior incidents of violence,
3 and treatment history to the program.

4 (8) The court also shall order the defendant to perform a
5 specified amount of appropriate community service, as
6 designated by the court. The defendant shall present the court
7 with proof of completion of community service and the court
8 shall determine if the community service has been satisfactorily
9 completed. If sufficient staff and resources are available, the
10 community service shall be performed under the jurisdiction of
11 the local agency overseeing a community service program.

12 (9) If the program finds that the defendant is unsuitable, the
13 program shall immediately contact the probation department or
14 the court. The probation department or court shall either
15 recalendar the case for hearing or refer the defendant to an
16 appropriate alternative batterer's program.

17 (10) (A) Upon recommendation of the program, a court shall
18 require a defendant to participate in additional sessions
19 throughout the probationary period, unless it finds that it is not in
20 the interests of justice to do so, states its reasons on the record,
21 and enters them into the minutes. In deciding whether the
22 defendant would benefit from more sessions, the court shall
23 consider whether any of the following conditions exist:

24 (i) The defendant has been violence free for a minimum of six
25 months.

26 (ii) The defendant has cooperated and participated in the
27 batterer's program.

28 (iii) The defendant demonstrates an understanding of and
29 practices positive conflict resolution skills.

30 (iv) The defendant blames, degrades, or has committed acts
31 that dehumanize the victim or puts at risk the victim's safety,
32 including, but not limited to, molesting, stalking, striking,
33 attacking, threatening, sexually assaulting, or battering the
34 victim.

35 (v) The defendant demonstrates an understanding that the use
36 of coercion or violent behavior to maintain dominance is
37 unacceptable in an intimate relationship.

38 (vi) The defendant has made threats to harm anyone in any
39 manner.

1 (vii) The defendant has complied with applicable requirements
2 under paragraph (6) of subdivision (c) or subparagraph (C) to
3 receive alcohol counseling, drug counseling, or both.

4 (viii) The defendant demonstrates acceptance of responsibility
5 for the abusive behavior perpetrated against the victim.

6 (B) The program shall immediately report any violation of the
7 terms of the protective order, including any new acts of violence
8 or failure to comply with the program requirements, to the court,
9 the prosecutor, and, if formal probation has been ordered, to the
10 probation department. The probationer shall file proof of
11 enrollment in a batterer's program with the court within 30 days
12 of conviction.

13 (C) Concurrent with other requirements under this section, in
14 addition to, and not in lieu of, the batterer's program, and unless
15 prohibited by the referring court, the probation department or the
16 court may make provisions for a defendant to use his or her
17 resources to enroll in a chemical dependency program or to enter
18 voluntarily a licensed chemical dependency recovery hospital or
19 residential treatment program that has a valid license issued by
20 the state to provide alcohol or drug services to receive program
21 participation credit, as determined by the court. The probation
22 department shall document evidence of this hospital or
23 residential treatment participation in the defendant's program
24 file.

25 (11) The conditions of probation may include, in lieu of a fine,
26 but not in lieu of the fund payment required under paragraph (5),
27 one or more of the following requirements:

28 (A) That the defendant make payments to a battered women's
29 shelter, up to a maximum of five thousand dollars (\$5,000).

30 (B) That the defendant reimburse the victim for reasonable
31 expenses that the court finds are the direct result of the
32 defendant's offense.

33 For any order to pay a fine, to make payments to a battered
34 women's shelter, or to pay restitution as a condition of probation
35 under this subdivision, the court shall make a determination of
36 the defendant's ability to pay. Determination of a defendant's
37 ability to pay may include his or her future earning capacity. A
38 defendant shall bear the burden of demonstrating lack of his or
39 her ability to pay. Express findings by the court as to the factors
40 bearing on the amount of the fine shall not be required. In no

1 event shall any order to make payments to a battered women's
2 shelter be made if it would impair the ability of the defendant to
3 pay direct restitution to the victim or court-ordered child support.
4 When the injury to a married person is caused, in whole or in
5 part, by the criminal acts of his or her spouse in violation of this
6 section, the community property shall not be used to discharge
7 the liability of the offending spouse for restitution to the injured
8 spouse, as required by Section 1203.04, as operative on or before
9 August 2, 1995, or Section 1202.4, or to a shelter for costs with
10 regard to the injured spouse, until all separate property of the
11 offending spouse is exhausted.

12 (12) If it appears to the prosecuting attorney, the court, or the
13 probation department that the defendant is performing
14 unsatisfactorily in the assigned program, is not benefiting from
15 counseling, or has engaged in criminal conduct, upon request of
16 the probation officer, the prosecuting attorney, or on its own
17 motion, the court, as a priority calendar item, shall hold a hearing
18 to determine whether further sentencing should proceed. The
19 court may consider factors, including, but not limited to, any
20 violence by the defendant against the former or a new victim
21 while on probation and noncompliance with any other specific
22 condition of probation. If the court finds that the defendant is not
23 performing satisfactorily in the assigned program, is not
24 benefiting from the program, has not complied with a condition
25 of probation, or has engaged in criminal conduct, the court shall
26 terminate the defendant's participation in the program and shall
27 proceed with further sentencing.

28 (b) If a person is granted formal probation for a crime in which
29 the victim is a person defined in Section 6211 of the Family
30 Code, in addition to the terms specified in subdivision (a), all of
31 the following shall apply:

32 (1) The probation department shall make an investigation and
33 take into consideration the defendant's age, medical history,
34 employment and service records, educational background,
35 community and family ties, prior incidents of violence, police
36 report, treatment history, if any, demonstrable motivation, and
37 other mitigating factors in determining which batterer's program
38 would be appropriate for the defendant. This information shall be
39 provided to the batterer's program if it is requested. The
40 probation department shall also determine which community

1 programs the defendant would benefit from and which of those
2 programs would accept the defendant. The probation department
3 shall report its findings and recommendations to the court.

4 (2) The court shall advise the defendant that the failure to
5 report to the probation department for the initial investigation, as
6 directed by the court, or the failure to enroll in a specified
7 program, as directed by the court or the probation department,
8 shall result in possible further incarceration. The court, in the
9 interests of justice, may relieve the defendant from the
10 prohibition set forth in this subdivision based upon the
11 defendant's mistake or excusable neglect. Application for this
12 relief shall be filed within 20 court days of the missed deadline.
13 This time limitation may not be extended. A copy of any
14 application for relief shall be served on the office of the
15 prosecuting attorney.

16 (3) After the court orders the defendant to a batterer's
17 program, the probation department shall conduct an initial
18 assessment of the defendant, including, but not limited to, all of
19 the following:

- 20 (A) Social, economic, and family background.
- 21 (B) Education.
- 22 (C) Vocational achievements.
- 23 (D) Criminal history.
- 24 (E) Medical history.
- 25 (F) Substance abuse history.
- 26 (G) Consultation with the probation officer.
- 27 (H) Verbal consultation with the victim, only if the victim
28 desires to participate.
- 29 (I) Assessment of the future probability of the defendant
30 committing murder.

31 (4) The probation department shall attempt to notify the victim
32 regarding the requirements for the defendant's participation in
33 the batterer's program, as well as regarding available victim
34 resources. The victim also shall be informed that attendance in
35 any program does not guarantee that an abuser will not be
36 violent.

37 (c) The court or the probation department shall refer
38 defendants only to batterer's programs that follow standards
39 outlined in paragraph (1), which may include, but are not limited
40 to, lectures, classes, group discussions, and counseling. The

1 probation department shall design and implement an approval
2 and renewal process for batterer's programs and shall solicit
3 input from criminal justice agencies and domestic violence
4 victim advocacy programs.

5 (1) The goal of a batterer's program under this section shall be
6 to stop domestic violence. A batterer's program shall consist of
7 the following components:

8 (A) Strategies to hold the defendant accountable for the
9 violence in a relationship, including, but not limited to, providing
10 the defendant with a written statement that the defendant shall be
11 held accountable for acts or threats of domestic violence.

12 (B) A requirement that the defendant participate in ongoing
13 same-gender group sessions.

14 (C) An initial intake that provides written definitions to the
15 defendant of physical, emotional, sexual, economic, and verbal
16 abuse, and the techniques for stopping these types of abuse.

17 (D) Procedures to inform the victim regarding the
18 requirements for the defendant's participation in the intervention
19 program as well as regarding available victim resources. The
20 victim also shall be informed that attendance in any program
21 does not guarantee that an abuser will not be violent.

22 (E) A requirement that the defendant attend group sessions
23 free of chemical influence.

24 (F) Educational programming that examines, at a minimum,
25 gender roles, socialization, the nature of violence, the dynamics
26 of power and control, and the effects of abuse on children and
27 others.

28 (G) A requirement that excludes any couple counseling or
29 family counseling, or both.

30 (H) Procedures that give the program the right to assess
31 whether or not the defendant would benefit from the program and
32 to refuse to enroll the defendant if it is determined that the
33 defendant would not benefit from the program, so long as the
34 refusal is not because of the defendant's inability to pay. If
35 possible, the program shall suggest an appropriate alternative
36 program.

37 (I) Program staff who, to the extent possible, have specific
38 knowledge regarding, but not limited to, spousal abuse, child
39 abuse, sexual abuse, substance abuse, the dynamics of violence
40 and abuse, the law, and procedures of the legal system.

1 (J) Program staff who are encouraged to utilize the expertise,
2 training, and assistance of local domestic violence centers.

3 (K) A requirement that the defendant enter into a written
4 agreement with the program, which shall include an outline of
5 the contents of the program, the attendance requirements, the
6 requirement to attend group sessions free of chemical influence,
7 and a statement that the defendant may be removed from the
8 program if it is determined that the defendant is not benefiting
9 from the program or is disruptive to the program.

10 (L) A requirement that the defendant sign a confidentiality
11 statement prohibiting disclosure of any information obtained
12 through participating in the program or during group sessions
13 regarding other participants in the program.

14 (M) Program content that provides cultural and ethnic
15 sensitivity.

16 (N) A requirement of a written referral from the court or
17 probation department prior to permitting the defendant to enroll
18 in the program. The written referral shall state the number of
19 minimum sessions required by the court.

20 (O) Procedures for submitting to the probation department all
21 of the following uniform written responses:

22 (i) Proof of enrollment, to be submitted to the court and the
23 probation department and to include the fee determined to be
24 charged to the defendant, based upon the ability to pay, for each
25 session.

26 (ii) Periodic progress reports that include attendance, fee
27 payment history, and program compliance.

28 (iii) Final evaluation that includes the program's evaluation of
29 the defendant's progress, using the criteria set forth in paragraph
30 (4) of subdivision (a) and recommendation for either successful
31 or unsuccessful termination or continuation in the program.

32 (P) A sliding fee schedule based on the defendant's ability to
33 pay. The batterer's program shall develop and utilize a sliding fee
34 scale that recognizes both the defendant's ability to pay and the
35 necessity of programs to meet overhead expenses. An indigent
36 defendant may negotiate a deferred payment schedule, but shall
37 pay a nominal fee, if the defendant has the ability to pay the
38 nominal fee. Upon a hearing and a finding by the court that the
39 defendant does not have the financial ability to pay the nominal
40 fee, the court shall waive this fee. The payment of the fee shall be

1 made a condition of probation if the court determines the
2 defendant has the present ability to pay the fee. The fee shall be
3 paid during the term of probation unless the program sets other
4 conditions. The acceptance policies shall be in accordance with
5 the scaled fee system.

6 (2) The court shall refer persons only to batterer's programs
7 that have been approved by the probation department pursuant to
8 paragraph (5). The probation department shall do both of the
9 following:

10 (A) Provide for the issuance of a provisional approval,
11 provided that the applicant is in substantial compliance with
12 applicable laws and regulations and an urgent need for approval
13 exists. A provisional approval shall be considered an
14 authorization to provide services and shall not be considered a
15 vested right.

16 (B) If the probation department determines that a program is
17 not in compliance with standards set by the department, the
18 department shall provide written notice of the noncompliant
19 areas to the program. The program shall submit a written plan of
20 corrections within 14 days from the date of the written notice on
21 noncompliance. A plan of correction shall include, but not be
22 limited to, a description of each corrective action and timeframe
23 for implementation. The department shall review and approve all
24 or any part of the plan of correction and notify the program of
25 approval or disapproval in writing. If the program fails to submit
26 a plan of correction or fails to implement the approved plan of
27 correction, the department shall consider whether to revoke or
28 suspend approval and, upon revoking or suspending approval,
29 shall have the option to cease referrals of defendants under this
30 section.

31 (3) No program, regardless of its source of funding, shall be
32 approved unless it meets all of the following standards:

33 (A) The establishment of guidelines and criteria for education
34 services, including standards of services that may include
35 lectures, classes, and group discussions.

36 (B) Supervision of the defendant for the purpose of evaluating
37 the person's progress in the program.

38 (C) Adequate reporting requirements to ensure that all persons
39 who, after being ordered to attend and complete a program, may
40 be identified for either failure to enroll in, or failure to

1 successfully complete, the program or for the successful
2 completion of the program as ordered. The program shall notify
3 the court and the probation department, in writing, within the
4 period of time and in the manner specified by the court of any
5 person who fails to complete the program. Notification shall be
6 given if the program determines that the defendant is performing
7 unsatisfactorily or if the defendant is not benefiting from the
8 education, treatment, or counseling.

9 (D) No victim shall be compelled to participate in a program
10 or counseling, and no program may condition a defendant's
11 enrollment on participation by the victim.

12 (4) In making referrals of indigent defendants to approved
13 batterer's programs, the probation department shall apportion
14 these referrals evenly among the approved programs.

15 (5) The probation department shall have the sole authority to
16 approve a batterer's program for probation. The program shall be
17 required to obtain only one approval but shall renew that
18 approval annually.

19 (A) The procedure for the approval of a new or existing
20 program shall include all of the following:

21 (i) The completion of a written application containing
22 necessary and pertinent information describing the applicant
23 program.

24 (ii) The demonstration by the program that it possesses
25 adequate administrative and operational capability to operate a
26 batterer's treatment program. The program shall provide
27 documentation to prove that the program has conducted
28 batterer's programs for at least one year prior to application. This
29 requirement may be waived under subparagraph (A) of paragraph
30 (2) if there is no existing batterer's program in the city, county,
31 or city and county.

32 (iii) The onsite review of the program, including monitoring of
33 a session to determine that the program adheres to applicable
34 statutes and regulations.

35 (iv) The payment of the approval fee.

36 (B) The probation department shall fix a fee for approval not
37 to exceed two hundred fifty dollars (\$250) and for approval
38 renewal not to exceed two hundred fifty dollars (\$250) every
39 year in an amount sufficient to cover its costs in administering

1 the approval process under this section. No fee shall be charged
2 for the approval of local governmental entities.

3 (C) The probation department has the sole authority to
4 approve the issuance, denial, suspension, or revocation of
5 approval and to cease new enrollments or referrals to a batterer's
6 program under this section. The probation department shall
7 review information relative to a program's performance or failure
8 to adhere to standards, or both. The probation department may
9 suspend or revoke any approval issued under this subdivision or
10 deny an application to renew an approval or to modify the terms
11 and conditions of approval, based on grounds established by
12 probation, including, but not limited to, either of the following:

13 (i) Violation of this section by any person holding approval or
14 by a program employee in a program under this section.

15 (ii) Misrepresentation of any material fact in obtaining the
16 approval.

17 (6) For defendants who are chronic users or serious abusers of
18 drugs or alcohol, standard components in the program shall
19 include concurrent counseling for substance abuse and violent
20 behavior, and in appropriate cases, detoxification and abstinence
21 from the abused substance.

22 (7) The program shall conduct an exit conference that assesses
23 the defendant's progress during his or her participation in the
24 batterer's program.

25 (d) This section shall remain in effect only until January 1,
26 2007, and as of that date is repealed, unless a later enacted
27 statute, that is enacted before January 1, 2007, deletes or extends
28 that date.

29 SEC. 5. Section 1203.097 of the Penal Code, as added by
30 Section 2 of Chapter 431 of the Statutes of 2003, is amended to
31 read:

32 1203.097. (a) If a person is granted probation for a crime in
33 which the victim is a person defined in Section 6211 of the
34 Family Code, the terms of probation shall include all of the
35 following:

36 (1) A minimum period of probation of 36 months, which may
37 include a period of summary probation as appropriate.

38 (2) A criminal court protective order protecting the victim
39 from further acts of violence, threats, stalking, sexual abuse, and

1 harassment, and, if appropriate, containing residence exclusion or
2 stay-away conditions.

3 (3) Notice to the victim of the disposition of the case. *If any*
4 *court later orders that the protective order be terminated, the*
5 *district attorney or city attorney shall notify the victim of the*
6 *order 30 days before the termination takes effect.*

7 (4) Booking the defendant within one week of sentencing if
8 the defendant has not already been booked.

9 (5) A minimum payment by the defendant of two hundred
10 dollars (\$200) to be disbursed as specified in this paragraph. If,
11 after a hearing in court on the record, the court finds that the
12 defendant does not have the ability to pay, the court may reduce
13 or waive this fee.

14 One-third of the moneys deposited with the county treasurer
15 pursuant to this section shall be retained by counties and
16 deposited in the domestic violence programs special fund created
17 pursuant to Section 18305 of the Welfare and Institutions Code,
18 to be expended for the purposes of Chapter 5 (commencing with
19 Section 18290) of Part 6 of Division 9 of the Welfare and
20 Institutions Code. The remainder shall be transferred, once a
21 month, to the Controller for deposit in equal amounts in the
22 Domestic Violence Restraining Order Reimbursement Fund and
23 in the Domestic Violence Training and Education Fund, which
24 are hereby created, in an amount equal to two-thirds of funds
25 collected during the preceding month. Moneys deposited into
26 these funds pursuant to this section shall be available upon
27 appropriation by the Legislature and shall be distributed each
28 fiscal year as follows:

29 (A) Funds from the Domestic Violence Restraining Order
30 Reimbursement Fund shall be distributed to local law
31 enforcement or other criminal justice agencies for state-mandated
32 local costs resulting from the notification requirements set forth
33 in subdivision (b) of Section 6380 of the Family Code, based on
34 the annual notification from the Department of Justice of the
35 number of restraining orders issued and registered in the state
36 domestic violence restraining order registry maintained by the
37 Department of Justice, for the development and maintenance of
38 the domestic violence restraining order databank system.

39 (B) Funds from the Domestic Violence Training and
40 Education Fund shall support a statewide training and education

1 program to increase public awareness of domestic violence and
2 to improve the scope and quality of services provided to the
3 victims of domestic violence. Grants to support this program
4 shall be awarded on a competitive basis and be administered by
5 the State Department of Health Services, in consultation with the
6 statewide domestic violence coalition, which is eligible to receive
7 funding under this section.

8 (6) Successful completion of a batterer's program, as defined
9 in subdivision (c), or if none is available, another appropriate
10 counseling program designated by the court, for a period not less
11 than one year with periodic progress reports by the program to
12 the court every three months or less and weekly sessions of a
13 minimum of two hours class time duration. The defendant shall
14 attend consecutive weekly sessions, unless granted an excused
15 absence for good cause by the program for no more than three
16 individual sessions during the entire program, and shall complete
17 the program within 18 months, unless, after a hearing, the court
18 finds good cause to modify the requirements of consecutive
19 attendance or completion within 18 months.

20 (7) (A) (i) The court shall order the defendant to comply with
21 all probation requirements, including the requirements to attend
22 counseling, keep all program appointments, and pay program
23 fees based upon the ability to pay.

24 (ii) The terms of probation for offenders shall not be lifted
25 until all reasonable fees due to the counseling program have been
26 paid in full, but in no case shall probation be extended beyond
27 the term provided in subdivision (a) of Section 1203.1. If the
28 court finds that the defendant does not have the ability to pay the
29 fees based on the defendant's changed circumstances, the court
30 may reduce or waive the fees.

31 (B) Upon request by the batterer's program, the court shall
32 provide the defendant's arrest report, prior incidents of violence,
33 and treatment history to the program.

34 (8) The court also shall order the defendant to perform a
35 specified amount of appropriate community service, as
36 designated by the court. The defendant shall present the court
37 with proof of completion of community service and the court
38 shall determine if the community service has been satisfactorily
39 completed. If sufficient staff and resources are available, the

1 community service shall be performed under the jurisdiction of
2 the local agency overseeing a community service program.

3 (9) If the program finds that the defendant is unsuitable, the
4 program shall immediately contact the probation department or
5 the court. The probation department or court shall either
6 recalendar the case for hearing or refer the defendant to an
7 appropriate alternative batterer's program.

8 (10) (A) Upon recommendation of the program, a court shall
9 require a defendant to participate in additional sessions
10 throughout the probationary period, unless it finds that it is not in
11 the interests of justice to do so, states its reasons on the record,
12 and enters them into the minutes. In deciding whether the
13 defendant would benefit from more sessions, the court shall
14 consider whether any of the following conditions exist:

15 (i) The defendant has been violence free for a minimum of six
16 months.

17 (ii) The defendant has cooperated and participated in the
18 batterer's program.

19 (iii) The defendant demonstrates an understanding of and
20 practices positive conflict resolution skills.

21 (iv) The defendant blames, degrades, or has committed acts
22 that dehumanize the victim or puts at risk the victim's safety,
23 including, but not limited to, molesting, stalking, striking,
24 attacking, threatening, sexually assaulting, or battering the
25 victim.

26 (v) The defendant demonstrates an understanding that the use
27 of coercion or violent behavior to maintain dominance is
28 unacceptable in an intimate relationship.

29 (vi) The defendant has made threats to harm anyone in any
30 manner.

31 (vii) The defendant has complied with applicable requirements
32 under paragraph (6) of subdivision (c) or subparagraph (C) to
33 receive alcohol counseling, drug counseling, or both.

34 (viii) The defendant demonstrates acceptance of responsibility
35 for the abusive behavior perpetrated against the victim.

36 (B) The program shall immediately report any violation of the
37 terms of the protective order, including any new acts of violence
38 or failure to comply with the program requirements, to the court,
39 the prosecutor, and, if formal probation has been ordered, to the
40 probation department. The probationer shall file proof of

1 enrollment in a batterer's program with the court within 30 days
2 of conviction.

3 (C) Concurrent with other requirements under this section, in
4 addition to, and not in lieu of, the batterer's program, and unless
5 prohibited by the referring court, the probation department or the
6 court may make provisions for a defendant to use his or her
7 resources to enroll in a chemical dependency program or to enter
8 voluntarily a licensed chemical dependency recovery hospital or
9 residential treatment program that has a valid license issued by
10 the state to provide alcohol or drug services to receive program
11 participation credit, as determined by the court. The probation
12 department shall document evidence of this hospital or
13 residential treatment participation in the defendant's program
14 file.

15 (11) The conditions of probation may include, in lieu of a fine,
16 but not in lieu of the fund payment required under paragraph (5),
17 one or more of the following requirements:

18 (A) That the defendant make payments to a battered women's
19 shelter, up to a maximum of five thousand dollars (\$5,000).

20 (B) That the defendant reimburse the victim for reasonable
21 expenses that the court finds are the direct result of the
22 defendant's offense.

23 For any order to pay a fine, to make payments to a battered
24 women's shelter, or to pay restitution as a condition of probation
25 under this subdivision, the court shall make a determination of
26 the defendant's ability to pay. Determination of a defendant's
27 ability to pay may include his or her future earning capacity. A
28 defendant shall bear the burden of demonstrating lack of his or
29 her ability to pay. Express findings by the court as to the factors
30 bearing on the amount of the fine shall not be required. In no
31 event shall any order to make payments to a battered women's
32 shelter be made if it would impair the ability of the defendant to
33 pay direct restitution to the victim or court-ordered child support.
34 When the injury to a married person is caused, in whole or in
35 part, by the criminal acts of his or her spouse in violation of this
36 section, the community property shall not be used to discharge
37 the liability of the offending spouse for restitution to the injured
38 spouse, as required by Section 1203.04, as operative on or before
39 August 2, 1995, or Section 1202.4, or to a shelter for costs with

1 regard to the injured spouse, until all separate property of the
2 offending spouse is exhausted.

3 (12) If it appears to the prosecuting attorney, the court, or the
4 probation department that the defendant is performing
5 unsatisfactorily in the assigned program, is not benefiting from
6 counseling, or has engaged in criminal conduct, upon request of
7 the probation officer, the prosecuting attorney, or on its own
8 motion, the court, as a priority calendar item, shall hold a hearing
9 to determine whether further sentencing should proceed. The
10 court may consider factors, including, but not limited to, any
11 violence by the defendant against the former or a new victim
12 while on probation and noncompliance with any other specific
13 condition of probation. If the court finds that the defendant is not
14 performing satisfactorily in the assigned program, is not
15 benefiting from the program, has not complied with a condition
16 of probation, or has engaged in criminal conduct, the court shall
17 terminate the defendant's participation in the program and shall
18 proceed with further sentencing.

19 (b) If a person is granted formal probation for a crime in which
20 the victim is a person defined in Section 6211 of the Family
21 Code, in addition to the terms specified in subdivision (a), all of
22 the following shall apply:

23 (1) The probation department shall make an investigation and
24 take into consideration the defendant's age, medical history,
25 employment and service records, educational background,
26 community and family ties, prior incidents of violence, police
27 report, treatment history, if any, demonstrable motivation, and
28 other mitigating factors in determining which batterer's program
29 would be appropriate for the defendant. This information shall be
30 provided to the batterer's program if it is requested. The
31 probation department shall also determine which community
32 programs the defendant would benefit from and which of those
33 programs would accept the defendant. The probation department
34 shall report its findings and recommendations to the court.

35 (2) The court shall advise the defendant that the failure to
36 report to the probation department for the initial investigation, as
37 directed by the court, or the failure to enroll in a specified
38 program, as directed by the court or the probation department,
39 shall result in possible further incarceration. The court, in the
40 interests of justice, may relieve the defendant from the

1 prohibition set forth in this subdivision based upon the
2 defendant's mistake or excusable neglect. Application for this
3 relief shall be filed within 20 court days of the missed deadline.
4 This time limitation may not be extended. A copy of any
5 application for relief shall be served on the office of the
6 prosecuting attorney.

7 (3) After the court orders the defendant to a batterer's
8 program, the probation department shall conduct an initial
9 assessment of the defendant, including, but not limited to, all of
10 the following:

- 11 (A) Social, economic, and family background.
- 12 (B) Education.
- 13 (C) Vocational achievements.
- 14 (D) Criminal history.
- 15 (E) Medical history.
- 16 (F) Substance abuse history.
- 17 (G) Consultation with the probation officer.
- 18 (H) Verbal consultation with the victim, only if the victim
19 desires to participate.
- 20 (I) Assessment of the future probability of the defendant
21 committing murder.

22 (4) The probation department shall attempt to notify the victim
23 regarding the requirements for the defendant's participation in
24 the batterer's program, as well as regarding available victim
25 resources. The victim also shall be informed that attendance in
26 any program does not guarantee that an abuser will not be
27 violent.

28 (c) The court or the probation department shall refer
29 defendants only to batterer's programs that follow standards
30 outlined in paragraph (1), which may include, but are not limited
31 to, lectures, classes, group discussions, and counseling. The
32 probation department shall design and implement an approval
33 and renewal process for batterer's programs and shall solicit
34 input from criminal justice agencies and domestic violence
35 victim advocacy programs.

36 (1) The goal of a batterer's program under this section shall be
37 to stop domestic violence. A batterer's program shall consist of
38 the following components:

39 (A) Strategies to hold the defendant accountable for the
40 violence in a relationship, including, but not limited to, providing

1 the defendant with a written statement that the defendant shall be
2 held accountable for acts or threats of domestic violence.

3 (B) A requirement that the defendant participate in ongoing
4 same-gender group sessions.

5 (C) An initial intake that provides written definitions to the
6 defendant of physical, emotional, sexual, economic, and verbal
7 abuse, and the techniques for stopping these types of abuse.

8 (D) Procedures to inform the victim regarding the
9 requirements for the defendant's participation in the intervention
10 program as well as regarding available victim resources. The
11 victim also shall be informed that attendance in any program
12 does not guarantee that an abuser will not be violent.

13 (E) A requirement that the defendant attend group sessions
14 free of chemical influence.

15 (F) Educational programming that examines, at a minimum,
16 gender roles, socialization, the nature of violence, the dynamics
17 of power and control, and the effects of abuse on children and
18 others.

19 (G) A requirement that excludes any couple counseling or
20 family counseling, or both.

21 (H) Procedures that give the program the right to assess
22 whether or not the defendant would benefit from the program and
23 to refuse to enroll the defendant if it is determined that the
24 defendant would not benefit from the program, so long as the
25 refusal is not because of the defendant's inability to pay. If
26 possible, the program shall suggest an appropriate alternative
27 program.

28 (I) Program staff who, to the extent possible, have specific
29 knowledge regarding, but not limited to, spousal abuse, child
30 abuse, sexual abuse, substance abuse, the dynamics of violence
31 and abuse, the law, and procedures of the legal system.

32 (J) Program staff who are encouraged to utilize the expertise,
33 training, and assistance of local domestic violence centers.

34 (K) A requirement that the defendant enter into a written
35 agreement with the program, which shall include an outline of
36 the contents of the program, the attendance requirements, the
37 requirement to attend group sessions free of chemical influence,
38 and a statement that the defendant may be removed from the
39 program if it is determined that the defendant is not benefiting
40 from the program or is disruptive to the program.

1 (L) A requirement that the defendant sign a confidentiality
2 statement prohibiting disclosure of any information obtained
3 through participating in the program or during group sessions
4 regarding other participants in the program.

5 (M) Program content that provides cultural and ethnic
6 sensitivity.

7 (N) A requirement of a written referral from the court or
8 probation department prior to permitting the defendant to enroll
9 in the program. The written referral shall state the number of
10 minimum sessions required by the court.

11 (O) Procedures for submitting to the probation department all
12 of the following uniform written responses:

13 (i) Proof of enrollment, to be submitted to the court and the
14 probation department and to include the fee determined to be
15 charged to the defendant, based upon the ability to pay, for each
16 session.

17 (ii) Periodic progress reports that include attendance, fee
18 payment history, and program compliance.

19 (iii) Final evaluation that includes the program's evaluation of
20 the defendant's progress, using the criteria set forth in paragraph
21 (4) of subdivision (a) and recommendation for either successful
22 or unsuccessful termination or continuation in the program.

23 (P) A sliding fee schedule based on the defendant's ability to
24 pay. The batterer's program shall develop and utilize a sliding fee
25 scale that recognizes both the defendant's ability to pay and the
26 necessity of programs to meet overhead expenses. An indigent
27 defendant may negotiate a deferred payment schedule, but shall
28 pay a nominal fee, if the defendant has the ability to pay the
29 nominal fee. Upon a hearing and a finding by the court that the
30 defendant does not have the financial ability to pay the nominal
31 fee, the court shall waive this fee. The payment of the fee shall be
32 made a condition of probation if the court determines the
33 defendant has the present ability to pay the fee. The fee shall be
34 paid during the term of probation unless the program sets other
35 conditions. The acceptance policies shall be in accordance with
36 the scaled fee system.

37 (2) The court shall refer persons only to batterer's programs
38 that have been approved by the probation department pursuant to
39 paragraph (5). The probation department shall do both of the
40 following:

1 (A) Provide for the issuance of a provisional approval,
2 provided that the applicant is in substantial compliance with
3 applicable laws and regulations and an urgent need for approval
4 exists. A provisional approval shall be considered an
5 authorization to provide services and shall not be considered a
6 vested right.

7 (B) If the probation department determines that a program is
8 not in compliance with standards set by the department, the
9 department shall provide written notice of the noncompliant
10 areas to the program. The program shall submit a written plan of
11 corrections within 14 days from the date of the written notice on
12 noncompliance. A plan of correction shall include, but not be
13 limited to, a description of each corrective action and timeframe
14 for implementation. The department shall review and approve all
15 or any part of the plan of correction and notify the program of
16 approval or disapproval in writing. If the program fails to submit
17 a plan of correction or fails to implement the approved plan of
18 correction, the department shall consider whether to revoke or
19 suspend approval and, upon revoking or suspending approval,
20 shall have the option to cease referrals of defendants under this
21 section.

22 (3) No program, regardless of its source of funding, shall be
23 approved unless it meets all of the following standards:

24 (A) The establishment of guidelines and criteria for education
25 services, including standards of services that may include
26 lectures, classes, and group discussions.

27 (B) Supervision of the defendant for the purpose of evaluating
28 the person's progress in the program.

29 (C) Adequate reporting requirements to ensure that all persons
30 who, after being ordered to attend and complete a program, may
31 be identified for either failure to enroll in, or failure to
32 successfully complete, the program or for the successful
33 completion of the program as ordered. The program shall notify
34 the court and the probation department, in writing, within the
35 period of time and in the manner specified by the court of any
36 person who fails to complete the program. Notification shall be
37 given if the program determines that the defendant is performing
38 unsatisfactorily or if the defendant is not benefiting from the
39 education, treatment, or counseling.

1 (D) No victim shall be compelled to participate in a program
2 or counseling, and no program may condition a defendant's
3 enrollment on participation by the victim.

4 (4) In making referrals of indigent defendants to approved
5 batterer's programs, the probation department shall apportion
6 these referrals evenly among the approved programs.

7 (5) The probation department shall have the sole authority to
8 approve a batterer's program for probation. The program shall be
9 required to obtain only one approval but shall renew that
10 approval annually.

11 (A) The procedure for the approval of a new or existing
12 program shall include all of the following:

13 (i) The completion of a written application containing
14 necessary and pertinent information describing the applicant
15 program.

16 (ii) The demonstration by the program that it possesses
17 adequate administrative and operational capability to operate a
18 batterer's treatment program. The program shall provide
19 documentation to prove that the program has conducted
20 batterer's programs for at least one year prior to application. This
21 requirement may be waived under subparagraph (A) of paragraph
22 (2) if there is no existing batterer's program in the city, county,
23 or city and county.

24 (iii) The onsite review of the program, including monitoring of
25 a session to determine that the program adheres to applicable
26 statutes and regulations.

27 (iv) The payment of the approval fee.

28 (B) The probation department shall fix a fee for approval not
29 to exceed two hundred fifty dollars (\$250) and for approval
30 renewal not to exceed two hundred fifty dollars (\$250) every
31 year in an amount sufficient to cover its costs in administering
32 the approval process under this section. No fee shall be charged
33 for the approval of local governmental entities.

34 (C) The probation department has the sole authority to
35 approve the issuance, denial, suspension, or revocation of
36 approval and to cease new enrollments or referrals to a batterer's
37 program under this section. The probation department shall
38 review information relative to a program's performance or failure
39 to adhere to standards, or both. The probation department may
40 suspend or revoke any approval issued under this subdivision or

1 deny an application to renew an approval or to modify the terms
2 and conditions of approval, based on grounds established by
3 probation, including, but not limited to, either of the following:

4 (i) Violation of this section by any person holding approval or
5 by a program employee in a program under this section.

6 (ii) Misrepresentation of any material fact in obtaining the
7 approval.

8 (6) For defendants who are chronic users or serious abusers of
9 drugs or alcohol, standard components in the program shall
10 include concurrent counseling for substance abuse and violent
11 behavior, and in appropriate cases, detoxification and abstinence
12 from the abused substance.

13 (7) The program shall conduct an exit conference that assesses
14 the defendant's progress during his or her participation in the
15 batterer's program.

16 (d) This section shall become operative on January 1, 2007.

17 SEC. 6. If the Commission on State Mandates determines that
18 this act contains costs mandated by the state, reimbursement to
19 local agencies and school districts for those costs shall be made
20 pursuant to Part 7 (commencing with Section 17500) of Division
21 4 of Title 2 of the Government Code.